

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

TIFFANY TRIBBLE,

Plaintiff

v.

C-1-09-568

CINCINNATI BELL TELEPHONE,

Defendant

ORDER

This matter is before the Court upon the Report and Recommendation of the United States Magistrate Judge (doc. no. 38), plaintiff's objections (doc. no. 42) and defendant's response (doc. no. 43). The Magistrate Judge recommended that defendant's Motion for Summary Judgment be granted.

Plaintiff objects to the Judge's Report and Recommendation on the grounds that his findings are contrary to law and makes the following specific objections.

Plaintiff objects to the Magistrate Judge's finding that plaintiff failed to create a jury issue regarding pretext and argues that jurors could find pretext from Michelle Simpson's inconsistent and changing testimony. Plaintiff states that jurors could also find pretext from the requirement that plaintiff return to employment as an employee hired after February 1, 2008 with a substantial pay cut. Plaintiff also objects to the Magistrate's finding that plaintiff was struggling with her duties as a Splicer at the time of her termination. Plaintiff argues that there is no evidence in the record rebutting her testimony that the required additional training was successful and that she was in no danger of failing the splicing class a second time. Finally, plaintiff objects to the Magistrate Judge's conclusion that the termination claims were not properly before the Court, despite the fact that they were raised in defendant's Motion for Summary Judgment and addressed by plaintiff in its response.

Defendant responds that it is undisputed that plaintiff struggled in her performance as a splicer and that the Magistrate Judge was correct in finding that defendant's decision not to reinstate plaintiff to her former position was a legitimate business decision based on plaintiff's struggling performance. There is nothing in the record inconsistent with Ms. Simpson's recollection that plaintiff was struggling as a splicer. Defendant also argues that the Magistrate Judge correctly found that the issue of plaintiff's termination was not raised in plaintiff's Complaint, plaintiff did not seek to amend her Complaint nor did plaintiff seek leave to amend her Complaint in opposition to defendant's Motion for Summary Judgment. The Magistrate Judge also correctly stated that plaintiff has not offered any evidence from which a jury could reasonably infer that she was terminated because of her race or sex.

CONCLUSION

Upon a *de novo* review of the record, especially in light of plaintiff's objections, the Court finds that plaintiff's objections have either been adequately addressed and properly disposed of by the Magistrate Judge or present no particularized arguments that warrant specific responses by this Court. The Court finds that the Magistrate Judge has accurately set forth the controlling principles of law and properly applied them to the particular facts of this case and agrees with the Magistrate Judge.

Accordingly, the Court hereby ADOPTS AND INCORPORATES BY REFERENCE HEREIN the Report and Recommendation of the United States Magistrate Judge (doc. no. 38). Defendant's Motion for Summary Judgment (doc. no. 17) is GRANTED.

This case is DISMISSED AND TERMINATED on the docket of this Court.

IT IS SO ORDERED.

s/Herman J. Weber
Herman J. Weber, Senior Judge
United States District Court